Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4712 of 2001 (S/S)

1. State of U.P. through the Secretary, Irrigation Department, Government Of Uttar Pradesh, Civil Secretariat, Lucknow.
2. Executive Engineer, Upari Ganga Nahar, Modernization Division-5 (World Bank Project), Roorkee, District-Hardwar.

..... Petitioners

Versus

1. Bijendra Kumar S/o Sri Nathi Ram, R/o Village Bahalpuri Majra-Raisi, Post-Niranganpur, District-Hardwar.

2. Presiding Officer, Labour Court, Dehradun (at present State of Uttaranchal),

..... Respondents

Learned Standing Counsel State of U.P., for the petitioners.
Sri Gopal Narain, learned counsel for the respondent No.1.

.....

Date: 31st August, 2005

Hon'ble P.C. Verma,J.

This petition has been filed by the petitioners seeking writ of certiorari quashing the impugned award dated 29.2.2000 passed by respondent No.2 in Adjudication Case No. 279 of 1999, contained in Annexure No. 1 to the writ petition, whereby the petitioners were directed to reinstate the respondent No.1/workman in service and pay him Rs. 7,000/- as compensation in lieu of back wages alongwith Rs. 1000/- as costs.

2. A dispute was referred, vide notification of the U.P. Government dated 18.8.1999, which was registered as industrial dispute. The reference was made in the following terms:-

> "Whether the termination of services of workman Sri Bijendra Kumar S/o Sri Nathi Ram, Beldar by the employers with effect from 12.3.1991 is justified and legal?"

4. Brief facts of the case are that the workman was working on the post of Chowkidar/Beldar with the employer establishment from 01.01.1989 on daily wages but on 12.3.1991 his services were terminated without any prior notice and pay in lieu of notice or compensation for retrenchment which amounts to violation of provisions of Section 6N of the U.P. Industrial Disputes Act. On the other hand the employers alleged that the workman did work in their establishment only 149 days from time to time during the period March 1989 to December 1989 and only 61 days in the year 1990 and he did not work 240 days in any twelve calendar months. It was further alleged by the employers that the workman is not entitled to get the benefit of provisions of Section 6N of the U.P. Industrial Disputes Act. The learned Labour Court considering the evidence adduced by the workman held that the termination of the workman was illegal and passed the impugned order. Feeling aggrieved, the petitioners have come up in writ petition.

5. The petitioners have challenged the impugned award on the grounds that the respondent No. 1 has not completed 240 days in a calendar year and the Labour Court has erroneously allowed the claim of the respondent No. 1 inspite of specific statement of the department that he has not completed 240 days and his services were dispensed with due to non-availability of work.

6. The employees filed the statement of working days year-wise and month-wise and also the muster rolls relating to the workman for the months of March 1989 to May 1989, July 1989, December 1989, January 1990 and September 1990 before the Labour Court. The Labour Court found that perusal of these documents show that the workman had not completed 240 days but the workman vehemently pleaded that he had also worked in those months for which the employers have not filed the muster rolls and to create obstruction in counting 240 days they have filed the muster rolls showing the fake names. The Labour Court scrutinized the muster rolls and rightly came to the conclusion that the workman had completed 240 days or more in twelve calendar months and he was illegally terminated from service in violation of provisions of Section 6N of the U.P. Industrial Disputes Act. In my opinion, there is no perversity in the said finding recorded by the Labour Court which is based on evidence.

7. Learned Standing Counsel for the petitioners further contended that the claim petition has been filed after a period of 7 years and, as such, the same is not maintainable as it is highly belated.

In the case **Sapan Kumar Pandit versus U.P. State Electricity Board and others reported in 2001 SC-SLR 658,** the Apex Court has held that it is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e. Section 4 K of the U.P. Act. In M/s Western India Watch Co. Ltd. versus the Western India Watch Co. Workers Union, AIR 1970 SC 1205, the Hon'ble Court made the following observations:

> "Therefore, the expression "at any time though seemingly without any limits, is governed by the context in which it appear. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can, "at any time, i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression " at any time" thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression "at any time" in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

In view of above, in my opinion, the Labour Court has rightly awarded a sum of Rs. 7,000/- towards compensation in lieu of the back wages to the respondent No. 1 on account of the delay in filing the claim petition and the finding on this point also requires no interference.

8. The workman has established that he had completed 240 working days in every calendar year. Thus, the termination order which was passed without following the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947 is wholly illegal.

9. In view of the findings recorded above, I do not find any infirmity or illegality in the order passed by the Labour Court. The findings recorded by the Labour Court are findings of fact and this Court, therefore, declines to interfere with the same.

10. The writ petition has no force and is dismissed.

No order as to costs.

(P.C. Verma,J.)

31.08.2005
P. Singh